

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

FILED

2008 AUG -5 AM 9:25 for
Clerk's Office File StampCLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIATO: ☐ U. S. DISTRICT JUDGE / ☒ U. S. MAGISTRATE JUDGE

FROM: L. Hammet, Deputy Clerk

RECEIVED DATE: 7/16/2008

CASE NO.: 08cv325 LAB (POR) DOCUMENT FILED BY: Petitioner

CASE TITLE: Burton v. Director

DOCUMENT ENTITLED: Notice of Motion to Abate Dismissal

Upon the submission of the attached document(s), the following discrepancies are noted:

Local Rule	Discrepancy
<input checked="" type="checkbox"/> 5.1	Missing time and date on motion and/or supporting documentation
<input type="checkbox"/> 5.3	Document illegible or submitted on thermal facsimile paper
<input type="checkbox"/> 5.4	Document not filed electronically. Notice of Noncompliance already issued.
<input type="checkbox"/> 7.1 or 47.1	Date noticed for hearing not in compliance with rules/Document(s) are not timely
<input checked="" type="checkbox"/> 7.1 or 47.1	Lacking memorandum of points and authorities in support as a separate document
<input type="checkbox"/> 7.1 or 47.1	Briefs or memoranda exceed length restrictions
<input type="checkbox"/> 7.1	Missing table of contents
<input type="checkbox"/> 15.1	Amended pleading not complete in itself
<input type="checkbox"/> 30.1	Depositions not accepted absent a court order
<input type="checkbox"/>	Supplemental documents require court order
<input type="checkbox"/>	Default Judgment in sum certain includes calculated interest
<input checked="" type="checkbox"/>	OTHER: Petitioner's filing of an opposition to a motion to dismiss is premature since Respondent has not filed a motion to dismiss. If and when Respondent does so, Petitioner may file an opposition in accordance with
	Date forwarded: 7/17/2008

ORDER OF THE JUDGE / MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

- ☐ The document is to be filed nunc pro tunc to date received.
- ☒ The document is NOT to be filed, but instead REJECTED, and it is ORDERED that the Clerk serve a copy of this order on all parties.

Rejected document to be returned to pro se or inmate? ☒ Yes. Court Copy retained by chambers ☐

Counsel is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83.1

CHAMBERS OF: POR

Dated: 8/1/08
cc: All Parties

By: C

P.O. BOX 3270, LATHROP, WA 98601
CORCORAN, CA. 93212

IN PRO PER.

REJECTED

IN THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CA.

2. IN RE E.W. BURTON #FO2720,

CASE NO. 08-0325 LAB (POR)

3. ON PETITIONER,

DATE - 07-15-08; TIME 0900

4. A DIRECTOR OF THE CO. OR,

NOTICE OF MOTION (RESERVED) TO ABATE THE DISMISSAL CONTRA,

5. RESPONDENT

BY RESPONDENT, PURSUANT TO 28 USC § 1716; JONES V. BOCK,

6

— U.S. —, 127 S. CT. 910 (2007); ARTUZ V.

7

BENNETT (2000) 531 U.S. 4, 121 S.Ct. 361; GONZALEZ

8

V. CROSBY (2005) — U.S. —, 125 S.Ct. 2641; F.R.C.P. 60(d)(1)

9

SWEET V. CUAP (9TH CIR. 1981) 640 F.2d 233, 236; SCHLUP

10

V. DELO (1995) 513 U.S. 298, 115 S. CT. 851; BENNETT

11

V. MUELLER (9TH CIR. 2002) 296 F.3d 752. BASED ON

12

MEMORANDUM OF POINTS & AUTHORITIES, THIS TIMELY FILED MOTION IS RESERVED

13

AS AN OPPOSITION TO RESPONDENT IN

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THE LIKELY EVENT OF A MOTION TO DISMISS,

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(QQ, BECAUSE RESPONDENT CONTENDS

16

PETITIONER HAS FAILED TO EXHAUST

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ANY STATE REMEDIES AS TO ANY GROUND

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FOR RELIEF ALLEGED IN THE PETITION,

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OR THAT THE PETITION IS BARRED BY

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THE STATUTE OF LIMITATIONS, OR THAT

21

THE PETITION IS SUBJECT TO DISMISSAL

22

UNDER RULE 9 OF THE RULES GOVERNING

23

§ 2254 CASES. REQUEST THAT COURT

24

DETERMINE THE FACTS, REQUEST AN

25

EVIDENTIARY HEARING, REQUEST THAT

26

THIS TIMELY FILED RESERVED OPPOSITION

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DEEM THIS CASE SUBMITTED. REQUEST FOR

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LEAVE TO FREELY AMEND THIS MOTION IF NECESSARY; REQUEST COURT TO

29

GIVE NOTICE TO ALL PARTIES INVOLVED IN THE

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INSTANT MATTER. REQUEST FOR THE

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APPOINTMENT OF COUNSEL —

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NOW COMES TIMELY THE PETITIONER,

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NOTICE IS HEREBY GIVEN TO ALL PARTIES INVOLVED IN THE INSTANT MATTER,

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STATEMENT OF FACTS
THE PETITIONER ERIC W. BURTON #FO2720, A UNCONSTITUTIONALLY

(1)